

SPECIAL AUTONOMY IN THE PROVINCE OF ACEH: THE IMPLEMENTATION OF *SYARIAT ISLAM**

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I. Introduction

Law Number 22 of 1998 on Regional Autonomy and Law Number 26 of 1998 on Balanced Central and Regional Finances, stipulate that Indonesian provinces have equal authority to manage themselves based on the aspirations of the local people.

However, the Province of Aceh and the Province of Papua have asked for a more special autonomy, in view of the characteristics of their local people, who have strong religious and traditional beliefs. This led to the enactment of Law Number 18 of 2001 concerning the Special Autonomy of Nanggroe Aceh Darussalam. One of the special characteristics of this special autonomy of Aceh is the implementation of the *syariat Islam* and the customary ways of life within the Unitary State of the Republic of Indonesia.

The implementation of the *syariat Islam* in Aceh is not entirely a new issue. The *Kifayatut Thulab* scripture, written by Syech Abdur Rauf in Malay language in the 16th century upon the specific request of the Aceh Darussalam kingdom, includes *syariat* laws to serve as a reference for judges in the Aceh Darussalam kingdom at the time. The implementation of *syariat Islam* was hampered during the colonial era, when, among

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other things, the Dutch Government banned the *qhishas* punishment (chopping off one's hand) in 1912.¹

The aspiration for *syariat Islam* has also been present in various other Indonesian provinces with predominantly Islamic population. However, these aspirations have recently lost some of their intensity compared to the previous years.²

In the ensuing paragraphs, it will be attempted to describe the nature of *syariat Islam* implemented in Aceh, the role of the Islamic Religious Court (*Pengadilan Agama Islam*) within Indonesia's legal system in Aceh; and the role of *ulamas* (Islamic clerics) in the implementation of *syariat Islam*.

2. What kind of *Syariat Islam* is Applied in Aceh

At least two questions have emerged at the time of determining the application of *syariat Islam* in Aceh. First, the relation between *syariat Islam* and *hukum Adat* (customary law). Second, is *syariat Islam* applicable only in the relationship between humans and God *ibadah* (worship), or should it also include inter-human relationships (*muamalah*).

First of all, in effect, *syariat Islam* and *hukum Adat* have been living in harmony in Aceh, just like the two sides of the same coin. There is a saying in Aceh language, namely: "*Adat bak poteumeurehom, hukom bak syiah kualala, qanun bak Putro Phang, reusam bale laksamana*" (*Adat*, or customs, come from the Sultan, the law comes from

¹ M. Solly Lubis, "*Aceh Mencari Format Khusus*" (Aceh Is Looking For A Special Form), *Jurnal Hukum*, vol. 1 No. 1 (2005), pg. 11

² Mahmud Al-Anshari, *Penegakan Syariat Islam: Dilema Kumatan di Indonesia* (The Enforcement of *Syariat Islam*: A Dilemma of the Religious Group In Indonesia) (Jakarta, Inisiasi Press, 2005, pg. 9-11.

the *ulamas*, *qanun* from the *putri pahang* – the sovereign, and the *reusam* from the admiral), which illustrates the relation between customs and religion.³

During the Dutch colonial era in 1850, Prof. Mr. Lodewijk Willem Christiaan van den Berg created the “*Receptio In Complexu*” theory, namely that in the Dutch Indies (today Indonesia), Islamic law is applicable for the population following the religion of Islam.⁴ This changed with the arrival of Shouck Hurgronje in the Dutch Indies in 1889. He created the “*Teori Receptie*” for the application of Islamic law for followers of the Islamic religion in the Dutch Indies. Shouck Hurgronje was of the opinion that Islamic Law should only be applicable if it becomes part of *hukum Adat* (customary law).⁵ Thus, Islamic law is not automatically applicable for the followers of the religion of Islam. Following Indonesia’s independence, this “*Teori Receptie*” was strongly challenged by Islamic leaders and Islamic law experts. They opposed Snouck Hurgronje’s opinion. Indonesian Islamic law experts called it the “*Receptio A Contrario*” theory, namely stating that *hukum Adat* is only applicable if it is not contrary to Islamic law.⁶ This theory emerged from the philosophy of the people of Minangkabau, West Sumatra, which states the following:

“*Adat bersendikan Syara (Syariat), Syara bersendikan Kitabullah (Al-Quran)*”.

(Customs are based on the *Syariat*, and the *Syariat* is based on Al-Quran.)

³ M. Solly Lubis, *ibid*, pg. 6

⁴ Sayuti Thalib: *Receptio A Contrario*, (Jakarta : Academica, 1981), pg. 5

⁵ Sayuti Thalib, *Ibid*, pgs 9-10

⁶ Sayuti Thalib, *ibid* pgs. 46-50

Islamic leaders have been of the opinion that in view of the two types of law applicable for the followers of Islam, namely *hukum Adat* and the Islamic law, Islamic law should be applied if a dispute arises, e.g. the distribution of inheritance, etc.

However, in reality, Indonesian courts do not always apply Islamic law for the followers of Islam. Let us take for example the case of determining the heir for the inheritance left by Subhan Z.E., a leader of the Islamic *Nahdlatul Ulama* party. The Court applied the Javanese *Adat* Law.⁷

Prior to that, the Indonesian Supreme Court in the *Marunduri cs. V. Maruhawan cs.* Case No. 172 K/Sip/1974 (1975), determined that the Islamic law in the village of Hinako, Nias (North Sumatra) is applicable for the followers of Islam in the distribution of inheritance, whereas *Adat* (Customary) law is applicable for non-Moslems.

At the same time, in its decisions in inheritance disputes in Lombok, rather than applying Islamic law, the Supreme Court has been applying Sasak *Adat* (Customary) law for those involved in such disputes. For instance, in the *Inag Rasini v. Imag Atimah cs.* Case No. 1589 K/Sip/1974, the Supreme Court of the Republic of Indonesia ruled that the currently prevailing *Adat* law is the *Adat* law granting equal status to women and men. In its decision, the Supreme Court is of the view that women in Lombok are equally entitled to receive inheritance. The previously applied *Adat* law in Lombok does not grant a right to women to receive inheritance.

This view was a continuation of the view of the Supreme Court of the Republic of Indonesia in the *Ginting v. Sitepu* case No. 179 K/Sip/1961 in Kabanjahe (North Sumatra). Initially, according to the *Adat* law of Batak Karo, women were not entitled to inheritance. However, the Supreme Court ruled that in the context of Indonesia's

⁷ Decision of the Central Jakarta District Court No.96/1973P dated February 22, 1973

independence, women and men have an equal status, hence the women of Batak Karo are entitled to receive inheritance.

Coming back to the question as to whether *Adat* law or Islamic law is applicable in Aceh, Regional Government Regulation Number 7 of 2000 concerning the Organization of *Adat* (Customary) Life, article 2 expressly stipulates that:

“*Adat* Law, the customs and traditions that are still applicable, live and develop in the society of Aceh, [and] insofar as they are not contradictory to *syariat Islam*, must be preserved.”

Thus, the *Adat* law applicable in Aceh follows the “*Receptio A Contrario*” theory, namely that *Adat* law is only applicable if it is not contradictory to Islamic law.

Second, another essential question is: should the applicable Islamic law not be limited to human – God relations, but rather, should it also be applied in inter-human relationships? More specifically, should *syariat Islam* be applicable in civil law, as well as criminal law?

Prior to the enactment of Law Number 18 of 2001 concerning Special Autonomy for the Special District of Aceh, the Regional Government of Aceh had issued Local Government Regulation Number 5 of 2000 concerning the Implementation of *Syariat Islam*.

In Article 5 paragraphs (1) and (2), the following is stipulated:

- “(1) In order to materialize specificity in Aceh in organizing religious life, any person or legal entity domiciled in this District is obligated to highly respect the implementation of *syariat Islam* in their life.
- (2) The implementation of *syariat Islam* as intended in paragraph (1) hereinabove shall include (a) *aqidah* (faith); (b) *ibadah* (worship); (c) *mu-amalah* (inter-human relations); (d) *akhlak* (morals); (e) education and *da’wah islamiyah/amar ma’ruf nahi mungkar*

(propagation of the Islamic faith/inducing people to do good deeds and avoid bad deeds?); (f) *baitulmal* (treasury?); (g) social matters; (h) *syiar* (the greatness) of Islam; (i) the defense of Islam; (j) *qadha* (judiciary); (k) *jinayat* (criminal law?) (l) *munakahat* (marriage law?); (m) *mawaris* (inheritance law?).”

The above mentioned Regional Government Regulation Number 5 of 2000 also contains criminal provisions. Article 19 stipulates the following:

- “(1) Any person violating the provisions of Article 4 paragraphs (1) and (3), Article 5 paragraph (1), Article 8 paragraphs (2) and (4), Article 11 paragraph (3), Article 15 paragraph (3) of this Regional Government Regulation shall be subject to the criminal sanction of imprisonment for not more than 3 (three) months, or a fine of not more than Rp.2,000,000 (Rupiah two million);
- (2) The fine intended in paragraph (1) hereinabove shall constitute Regional revenues, and shall be deposited directly into the Regional treasury.
- (3) In addition to the general criminal sanctions as intended in paragraph (1) hereinabove, violators can also be subject to *adat* (customary) sanctions as stipulated in the Regional Government Regulation concerning the Organizing of Customary Life.
- (4) Criminal acts as intended in paragraph (1) hereinabove shall be offense.”

The above mentioned Regional Government Regulation had been issued prior to the enactment of Law Number 18 of 2001 concerning the Special Autonomy for the Special District of Aceh, further replaced by the new Draft Law upon the signing of the peace treaty between the Indonesian Government and the Free Aceh Movement (*Gerakan Aceh Merdeka*).

The classification of *syariat* Islam stipulated in Regional Government Regulation Number 5 of 2000 is not based on a clear standard used by Islamic law experts today. For instance, “*qadha*” (judiciary) is distinguished from *jinayat* (criminal), while criminal punishment is determined by the Courts. This Regional Government Regulation appears to interpret *Syariat* in the general sense of the word, namely within the overall teachings

of Islam. Contemporary Islamic law experts (*fuqaha*) emphasize the implementation of *syariat* only in Islamic law that requires State authority. This means that Islamic law which is outside the scope of modern law is fully left up to the individual concerned.⁸

Syariah can mean “the way”, so that it can be interpreted as ways leading to God, hence every person can take different ways, however, in the same context of heading towards God. If we look further into the holy scriptures, not less than 10 verses explicitly mention *syariah*. At the same time, only 15% of the commands regarding devotion to God, subsequently formulated as *syariah* by the *fikih*, is explicit, the rest is vague, and requires human interpretation. There are at least three main points. The first, who has the authority to formulate *syariah Islam* in Indonesia? And to what extent? Secondly, the *tafsir* (interpretation) of *Al-Quran* is still dominated by men, which is often not beneficial for women. For instance, there is still an on-going debate about wearing *jilbab* (female headgear); however, in Aceh women leaving their home are required to wear *jilbab*. The police are watching the implementation of this regulation. Third, the interpretation of doctrine is often political and hegemonistic in nature.⁹

Another issue likely to arise is whether the existing Islamic law adequately provides for all currently existing legal relations. For example, in reality, in addition to Islamic law provisions, agreements entered into by *Syariah Bank* also include western civil law provisions originating from *Code Napoleon*.¹⁰

⁸ Rifyal Ra’bah, “*Syariat Islam dan Otonomi Khusus Aceh*” (*Syariat Islam and Special Autonomy in Aceh*), conveyed at Syariah Faculty IAIN Sunan Kalijaga, Yogyakarta, September 24, 2001.

⁹ Zuly Qodir: *Syariah Demokratik: Pemberlakuan Syariah Islam di Indonesia (Democractic Syariah: The Application of Syariah Islam in Indonesia)*; (Yogyakarta: Pustaka Pelajar, 2004); pgs. 293-298.

¹⁰ Tary Maharany Barus, “*Penerapan Hukum Perjanjian Islam Bersama-sama Dengan Hukum Perjanjian Menurut Kitab Undang-Undang Hukum Perdata: Study Mengenai Akad Pembiayaan Antara Bank Syariah dan Nasabahnya di Indonesia*” (*The Application of Islamic Contract Law Side by Side with Contract Law as Set Forth in the Civil Code: A Study of Financing Akad - Contracts Between Bank Syariah*

Syariat Islam is often interpreted as '*fiqh*' and Islamic law. In the history of Islam, these three words have attained different meanings in their development. In general, *Syariat Islam* means the complete text of the *Quran* and the *Sunnah* (The Prophet's words) as commands of God, which now serve as guidelines in the life of the followers of the religion of Islam. Some of these commands are related to the relationship between the individual and Allah, while some others deal with inter-human relations in community life. The latter requires state authority to ensure implementation, while some other commands are related to norms of morality, ethics, and other matters to be dealt with by the individuals concerned.

Certain verses of the *Al-Quran* require explanation. Some of these explanations can be found in the *Hadits Nabi* (The Prophet's Words). Those that cannot be found in the *hadits Nabi* require interpretation by Islamic law experts. In addition to the above, there are new events not dealt with in religious texts, requiring legal formulation that can be considered to be in line with *syariat Islam*. These two matters are referred to as '*fiqh*' or the legal concept. Furthermore, Islamic law is interpreted as the understanding of *syariat* as set forth in the constitution, laws and implementing regulations. These become part of state law.

Syariat Islam, in the context of state law, means '*fiqh*'. It is not possible for '*fiqh*' to automatically become state law, because all *mazhab* (school of thought) in Islam create '*fiqh*', not with the purpose of becoming state law, but as part of the law taken from the *syariat*, covering areas that are broader than state law.

and its Clients in Indonesia) (doctoral dissertation), Universitas Sumatera Utara, Medan, 2006, pgs. 183-208.

Law in Islam is broader than law as we understand it, but if the eight areas set forth in this Regional Government Regulation are to be stipulated in state law, it can cause potential complexities. For instance, if *'diyani'* law, which is dependent on individual compliance, is regulated in state law, it is likely to limit individual freedom and to become burdensome for the people; state law should not, for instance, interfere with matters of worship, morality and individual beliefs. State law becomes relevant if issues of worship, morality and personal belief are related to the rights and obligations of another person. For instance, *zakat* (tithe) and *haji* (haj) need to be stipulated by law, because both of these are related to the finances of the people.¹¹

As a matter of comparison, Egyptian lawmakers have not been able to offer a final definition of the basic principles of *syari'at Islam* to date. Social institutions mandated with the task of actualizing *syariat Islam* are facing a similar situation. The word *syariah* in *Al-Quran* does not mean legal rules; rather, it implies ways or methods. In the course of its development, the term *syariah* underwent changes, and is now interpreted as legal rules set forth in the *Al-Quran* and the *Hadits*, and even include *tafsir* (interpretation), *ijtihad* (individual interpretation and judgment) and *fatwa* (a binding ruling in religious matters) explaining the implementation of these rules, manifested in the form of *fiqh*. The words *syariah Islam* has been recently used as an equivalent of *fiqh Islam*. The implementation of *syariah* is today interpreted as the implementation of *fiqh Islam*, without indicating the clear distinction between *fiqh* and *syariah*. One should remember that *fiqh* has been developed in response to events occurring along the history

¹¹ Rifyal Ra'bah, "Syariat Islam di Aceh" (*Syariat Islam in Aceh*), in M. Talib Puspokusumo (Ed), *Reformasi Hukum di Indonesia: Sebuah Keniscayaan* (Legal Reform In Indonesia: An Impossibility) (Jakarta : Ministry of Justice and Human Rights, 1999), pgs. 175-181.

of humankind, it can change depending on the prevailing conditions, and is not standard in nature.¹²

Most of *syariat* has not been explicitly commanded by God. In fact, *syariat* serves to control human interpretation efforts while creating and implementing laws. However, *syariat* is an essential value that must be preserved by the society. This paradox is evident from the tension between the obligation to live according to God's laws, and the fact that such law is formed only through stipulations made based on subjective human interpretation. Even if there were a single understanding that a certain positive government reflects God's law, there would still be many possible ways for implementation and subjective application. This dilemma reaches an apparent solution within the discourse taking place in Islam, distinguishing *fikih* and *syariat*. It is said that *syariat* is God's ideal idea, in the heavens above, and is not influenced or 'polluted' by uncertainty. *Fiqih* is man's endeavor to understand and implement the ideal ideas of *syariat*. Therefore, *syariat* is eternal, pure and without flaw, whereas *fiqih* is not so.¹³

An issue is most likely to arise, as the legal experts' opinion is debatable. There are different opinions among the followers of Islam themselves, as reflected in the different schools of thought concerning Muslim law. In this context, some feel it is inappropriate for the state to intervene by issuing regulations.¹⁴

In several versions of the new Draft Law On Governance in Aceh, provisions for the implementation of *syariat* Islam are included in a special article. It is stipulated,

¹² Muhammad Said-al-Asmawi: *Problematika dan Penerapan Syariat Islam Dalam Undang-Undang* (Issues and Implementation of Syariat Islam in Laws) (translated by Saiful Ibad, M.A.) (Jakarta : Gaung Persada Press, 2005), pgs. 27-35.

¹³ Khaled Abou El Fadl, *Islam dan Tantangan Demokrasi* (Islam and Challenges Of Democracy), (translation by Gifta Ayu Rahmani and Ruslani). (Jakarta : Ufuk Press, 2004), pgs. 42-43

¹⁴ See inter alia Ulil Abshar – Abdalla, *Menjadi Muslim Liberal* (To Become a Liberal Muslim) (Jakarta : Penerbit Nalar, 2005), pgs. 156-157.

among other things, that every person embracing the religion of Islam should abide by and implement *syariat* Islam in their daily life individually, in the family and in the regional government in the nation's and state's life. Every citizen of the Republic of Indonesia or any person residing or visiting the province of Nanggroe Aceh Darussalam must respect the implementation of *syariat* Islam.

Another version of the draft indicates that the implementation of *syariat* Islam includes *akidah*, *akhlak*, *ibadah*, *mu-amalah*, *ahwal al-syakhshiyah*, *jinayah*, judiciary, education, Islamic *dakwah* (propagation of faith), *syiat* and the defense of Islam. The implementation of the above described *syariat* Islam is regulated by '*Qanun*' (regional regulation).

3. The Role of the *Syariah* Court

The Indonesian Supreme Court officiated the *Syariah* Court in Aceh on March 4, 2003 pursuant to Law Number 18 year 2001 concerning the Special Autonomy of Nanggroe Aceh Darussalam. It is stipulated in Article 1 paragraph (7) of the above mentioned Law that the *Syariah* Court is a judicial body free from the influence of any other parties within the territory of the Province of Nanggroe Aceh Darussalam, applicable for the followers of Islam. Article 25 paragraph (2) clarifies that the authority of the *Syariah* Court is based on *syariah* Islam within the national legal system, further stipulated in the '*Qanun*' (regional regulation of the Province of Aceh). At the appeals level, the *Syariah* Appeals Court was formed in the Capital City of the Province. Cassation is brought to the Indonesian Supreme Court.

For the above purpose, the existing Religious Court (*Pengadilan Agama*) in the Province of Aceh, has been changed into *Syariah* Court (*Mahkamah Syariah*). The

jurisdiction and authority of the *Mahkamah Syariah* includes the jurisdiction and authority of the Religious Court, namely marriage and inheritance, in addition to issues arising in society related to worship and *syiar* Islam as determined in the *Qanun*.¹⁵

The above described competence of the *Syariah* Court is broader than that of the Religious Court in the past, namely in addition to competence in the field of civil law, it also includes competence in criminal law. The question is, what should be the competence in the field of criminal law which includes '*hudud*' (serious offense against God's right), '*qishas*' (offense against humans) and '*ta'zir*' (offense causing damage to other people) within the national legal system?¹⁶

As the *Syariah* Court is intended only for followers of Islam, the District Court and the High Court will continue to exist for non-Moslems.

The first punishment which received big public attention was caning imposed on 12 gamblers in Bireuen on June 24, 2005. *Qanun* (regional regulation) Number 13 of 2003 on "*maisir*" or gambling, in Article 23 sets forth as follows:

- (1) Any person violating the provisions shall be subject to the punishment of caning in public, with not more than 12 strokes, and not less than 6 strokes.
- (2) Any person or legal entity or non-government business entity that violates the provision shall be subject to '*uqubat*' or a fine of not more than Rp.25 million and not less than Rp.15 million.

Those imposed with the punishment by caning were people caught red handed while gambling and were proven to have violated the *Qanun* of the Province of Nanggroe Aceh Darussalam Number 13 of 2003 mentioned above. To date, there have been only

¹⁵ Decree of the President of the Republic of Indonesia Number 11 Year 2003 concerning the *Syariah* Court and the *Syariah* Court in the Province of Nanggroe Aceh Darussalam, March 3, 2003.

¹⁶ Topo Santoso, Sh. MH. *Membumikan Hukum Pidana Islam: Penegakan Syariah Dalam Wacana dan Agenda* (Bringing Islamic Criminal Law To Earth: The Implementation of *Syariah* In Discourse and Agenda) (Jakarta : Gema Insani, 2003), pg. 112

three special *Qanuns* related to the implementation of *syariat* Islam in Aceh, namely concerning gambling, alcoholic beverages and *zina* (any sexual act outside of marriage).¹⁷

The convicts were summoned by the officer one by one, and had to stand upright on a stage. The officer's voice could be heard counting out loud the number of strokes made by the executioner (*algojo*) caning them. Each of the convicts were caned with a one-meter long rattan cane by the executioner wearing a hood over his head and a light green robe. The identity of the executioner, who is also a member of the *syariat* Islam police force, is kept secret.

After having been caned, the convicts descended from the beautifully decorated stage. The convicts wearing a special white outfit, were actually cheered like heroes. They were rewarded with hugs, kisses on both cheeks, and a gift from a high-ranking regional government official. The first hug and kisses came from the Acting Governor of Aceh, Azwar Abubakar, followed by the Regent of Bireuen, Mustafa Gelanggang, the Head of the Bireuen Public Prosecutor's Office, M. Adenan, and the Head of the Aceh *Syariat* Islam Service Office, Alyasa Abubakar. The convicts then received a gift in the form of *Al-Quran*, *sajadah* (prayer rug) and a complete set of prayer outfit.

Convicts were caned six to ten times, depending on the grade of their offense. Prior to being caned, the officer had read out the identity and the sin of the convicts, who were vendors, farmers, laborers and *madrasah* (Islamic school) teachers.

After having been caned, none of the victims suffered from serious wounds. Only Hasan Basri Thaib complained of headache and had to be attended to by a medical officer. The Regional Government had several medical doctors and paramedics stand by.

¹⁷ Kompas, June 25, 2005.

About 2,000 onlookers witnessed the event, just like an entertainment performance.¹⁸

Not all people agree with this execution of punishment by caning. Some think it was not commensurate with the level of offense committed by the gamblers undergoing the punishment. Prior to having been caned, they had each been imposed with an average 2-month imprisonment. They engaged in petty gambling, which cannot be proportionately compared to cases of great oppression, such as corruption.¹⁹

Other people yet reject the punishment by caning, because they consider it to be cruel, inhumane, and degrading for human dignity. First, it is not consistent with Article 28 G paragraph (2) of the 1945 Constitution, which expressly stipulates that “every person is entitled to be free from torture or acts degrading human dignity”. Second, Law Number 39 of 1999 concerning Human Rights, namely Article 33 paragraph (1) stipulates that “every person is entitled to be free from torture, punishment or cruel, inhumane treatment that degrades their human dignity.” Third, it is not in line with Article 16 of Law Number 15 of 1998 concerning the Ratification of the Anti-Torture Convention.

Many of the emerging comments have been raising the issue as to whether the implementation of such punishment creates the sense of justice? In other words, the execution of caning appears to be discriminative, as it has been carried out on ordinary people who do not have the power to influence judges and prosecutors. At the same time, why is it that other violators, who are rich or occupy high office, are not subjected to

¹⁸ Media Indonesia, June 25, 2005.

¹⁹ Teuku Kemal Fasya, “*Hukum Cambuk dan Keadilan*” (Punishment by Caning and Justice), Kompas, June 25, 2005.

similar punishment? Would caning not be a more suitable form of punishment for more serious cases, such as the eradication of corruption?²⁰

In several versions of the new Draft Law On Nanggroe Aceh Darussalam, the *Syariah* Court has jurisdiction over *al-syakhsiyah*, *mu-amalah* and *jinayah*, which is based on *syariat* Islam, and is further regulated in *Qanun*. The *Syariah* Court has jurisdiction over followers of Islam as well as non-Moslems committing criminal acts or civil disputes jointly with followers of Islam. All civil law violations by members of the military apparatus who are followers of the religion of Islam are to be tried by the *Syariah* Court.

4. The Role of *Ulamas* in the Regional Government

Several versions of the new Draft Law On Aceh Special Autonomy also provides for the role of *ulamas* in the regional government. It mandates the establishment of an *ulama* institution by the Provincial (*Provinsi*) and Municipal (*Kabupaten/Kota*) Governments, with members consisting of experts in the religion of Islam, and called *Majelis Permusyawaratan Ulama* (*Ulama's* Consultative Council). This is an independent institution. Its function is to consider regional policies, governance, development and social and economic order in accordance with Islam. The procedure for providing such advice is to be regulated in a *Qanun*.

The functions and authorities of the *Majelis Permusyawaratan Ulama* are as follow:

- a. issue general instructions (*fatwa*), requested or otherwise, regarding social issues;

²⁰ Ahmad Aly, "*Hukum Cambuk: humanis dan Adilkah?*" (Punishment By Caning: Is it Humane and Just?) *Republika*, July 15, 2005

- b. provide direction and guidance when differences of opinion occur in society related to religious issues;
- c. maintain inter-faith harmony.

The *ulama* institution in Aceh, which was initially *Majelis Ulama Indonesia* (MUI – Indonesian *Ulamas* Council), was changed to *Majelis Permusyawaratan Ulama* (MPU). The purpose of this change was to increase the role and influence of *ulamas*. However, in the course of recruitment of membership for the MPU, which is conducted based on local representation, this institution has invited criticism.²¹

The question arises: will this *Majelis Permusyawaratan Ulama* become the ‘guardian of *syariat* Islam?’ In the exclusive point of view, *syariat* Islam is positioned at the highest level of law in the world. Other laws made by humans must be adjusted to the provisions of *syariat* Islam. In order to ensure that laws do not deviate from the provisions of *syariat* Islam, every law made by humans, including those made by the Parliament, must be overseen by an institution, which may even have a right for veto.²² In reality, however, even *ulamas* can differ in opinion regarding certain matters.

5. Conclusion

Apparently, the implementation of *syariat* Islam in Aceh is still a long way to go, especially if such *syariat* Islam is to be further stipulated in the *Qanun* (regional

²¹ Nurroliman, “*Formalisasi Syariat Islam di Dae4rah-Daerah: Sebuah Catatan Kritis*” (The Formalization of *Syariat* Islam in the Regions: A Critical Note), in Prof.Dr. Masykuri Abdillah, et al.: *Formalisasi Syariat Islam di Indonesia : Sebuah Pergulatan Yang Tak Pernah Tuntas*. (The Formalization of *Syariat* Islam in Indonesia: A Never Ending Struggle)

²² Marzuki Wahid and Nurrohman, “*Syariat Islam Versus Negara-Bangsa : Problem Paradigma Pemikiran Keislaman*” (*Syariat* Islam vs. State-Nation: The Problem of Paradigm in Islamic Thought”) in Adnan Mahmaud et al (editor), *Pemikiran Islam Kontemporer di Indonesia* (Contemporary Islamic Thought in Indonesia) (Yogyakarta : STAIN Ternate, Ministry of Religious Affairs of the Republic of Indonesia and Pustaka Pelajar, 2005), pg. 160

regulation). Some issues will remain in the center of debate, especially concerning the state's intervention in the implementation of an individual's obedience in the relationship between humans and God (worship). How to make sure that an individual has met the obligations and has followed the prohibitions in the religion of Islam? Another issue concerns interpretation by *ulamas* of various actual issues in society, such as bank interest, women's rights, and forms of criminal punishment in Islam.

When we speak about the implementation of *syariat* Islam in the government, we have to remember that it involves the enforcement of law that comes from Allah and the sense of justice in administering social and national life, law-making as well as the judicial process. These are issues that require a thorough and careful consideration at the highest national level.